

## HUMAN SERVICES BOARD

## INTRODUCTION

## FINDINGS OF FACT

2. Later in June 2009 the Department learned that the petitioner's husband had returned to work. Based on his reported earnings the Department determined that the petitioner was no longer eligible for CHAP and it notified her that her benefits would be terminated effective July 31,

2009. The petitioner appealed this decision, and her benefits have been continued pending the outcome of this appeal.

3. On July 22, 2009 the petitioner reported that she had filed for a divorce from her husband. However, she also reported that she and her husband were still living in the same house.

4. A hearing in the matter was held on September 3, 2009. The petitioner did not dispute the Department's determination of the amount of her and her husband's income. She stated that they were getting divorced, but that they were still living in the same house. She admitted that there has been no temporary order regarding separation.

5. The petitioner's and her husband's countable combined income is \$3,664 a month, which is just \$6 over the CHAP maximum of \$3,658 (300% of Federal Poverty Level). The petitioner was advised that if her income decreased by this amount, even voluntarily, she could reapply for CHAP.

ORDER

The Department's decision is affirmed.

REASONS

Income eligibility for CHAP is determined based on all earned and unearned income in the household, and must be below 300% FPL. W.A.M. § 5913. "Financial need" for CHAP is determined under the same rules used for VHAP. W.A.M. § 5916. These rules include the following at W.A.M. § 5320:

An individual must be a member of a VHAP group with countable income under the applicable income test to meet this requirement.

A VHAP group includes all the following individuals if living in the same home:

A. the VHAP applicant and his or her spouse.

. . .

Unless and until the petitioner and her husband obtain a legally binding court decree altering their marriage status, as long as they are living in the same home they must be considered "spouses" within the meaning of the above regulation.<sup>1</sup> Inasmuch as there is no dispute that the Department correctly determined the petitioner's income, and that its decision was in accord with the above regulations, the Board is bound to affirm that decision. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

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<sup>1</sup>As noted above, this may well become a moot issue for the petitioner if she can reduce her income by \$6 a month.